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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/740,486	12/19/2000	Alan S. Waggoner	92053CONCIPCON	6161
23117	7590	07/21/2004	EXAMINER	
NIXON & VANDERHYE, PC 1100 N GLEBE ROAD 8TH FLOOR ARLINGTON, VA 22201-4714			PONNALURI, PADMASHRI	
			ART UNIT	PAPER NUMBER
			1639	

DATE MAILED: 07/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/740,486

Applicant(s)

WAGGONER, ALAN S.

Examiner

Padmashri Ponnaluri

Art Unit

1639

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 17 May 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.  
2. ☐ The proposed amendment(s) will not be entered because:  
(a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ they raise the issue of new matter (see Note below);  
(c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.  
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.  
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: none.Claim(s) objected to: none.Claim(s) rejected: 25-29.Claim(s) withdrawn from consideration: 9-12, 15, 19, 21-24.

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.  
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.  
10. ☐ Other: \_\_\_\_\_

  
PADMASHRI PONNALURI  
PRIMARY EXAMINER

Padmashri Ponnaluri  
Primary Examiner  
Art Unit: 1639

Continuation of 5. does NOT place the application in condition for allowance because: the rejections of record over Masuda et al; Waggoner et al; and Heseltine and Masuda et al have been maintained for the following reasons:

Applicants argue that Masuda et al disclose spectral sensitizers and that are used to label trace components such as an immunogen or antibody. The reaction product is brought into contact with a silver halide sensitive photographic material, exposing to light and developing the exposed silver. The compounds used therefore possess the capability to impart spectral sensitization to silver halides.

Applicants arguments have been considered and are not persuasive because the instant claims are drawn to a reaction product selected from the group consisting of luminescent cyanine, merocyanine and oxanil dyes.

Applicants argue the process of making the product. the method of making a product does not make the product claims patentably distinct from the prior art product.

Applicants further argue the instant claimed products are detected by luminescence detection, thus the dyes are luminescent. Applicants arguments have been considered and are not persuasive, since the reference discloses cyanine dyes, and the method of detection does not impart patentable distinction to the prior art product. If applicants wish to include product limitations, applicants are suggested to claim the method.

Applicants further argue the Waggoner et al reference does not recite the fluorescent properties of the cyanine dyes. Applicants arguments have been considered and are not persuasive, since the instant claims recite cyanine dyes and the reference (Waggoner et al) disclose cyanine dyes with absorbance of 660 nm which is within the claimed 400-900 nm range of the claimed cyanine dyes.

Applicants arguments regarding the rejection of claims over the combined teachings of Heseltine et al Masuda et al have been considered. Applicants' arguments are based on individual reference teachings whereas the rejections are based on combined teachings of both Heseltine et al and Masuda et al.

Thus, the rejections of record have been maintained for the reasons set forth in the final office action mailed on 1/23/04.